IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

MFA.No. 1345 of 2001()

OPMV.200/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR
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APPELLANT: PETITIONER IN OP. (MV)

BABURAJ, S/O. RADHAKRISHNAN,
AGED 24, MAYA VIHAR,
VAZHIKULANGARA, PARAVUR P.O.,
ERNAKULAM.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)

RESPONDENTS: RESPONDENTS IN OP. (MV)
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1. P.SASIDHARAN, S/O.KRISHNA MENON
AGED 42, PANAMPILLY HOUSE,
KATHIKUDAM KARA, KORATTY.

2. THE ORIENTAL INSURANCE CO.LTD.,
P.B. NO.48, CHALAKUDY 68030.

BY ADV. SRI.P.V.JYOTHI PRASAD - R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1345 OF 2001

Dated 6th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with a motor accident by which he sustained serious injuries. He claimed a compensation of Rs.1,85,000/=. The Tribunal awarded a total compensation of Rs.68,200/=. Only quantum of compensation is disputed in this appeal.

2. Ext.A4 is the wound certificate. He was in hospital for 41 days. He underwent inpatient treatment in Medical Trust Hospital, Ernakulam. Operation was done. K.wire fixation and removal of fixation were done. According to the claimant, he was earning Rs.1,000/= per month as a tuition master. As per the second schedule which was framed in 1994, the income of a non-earning person is Rs.1,250/= per month. Therefore, Rs.1,000/= claimed was accepted by the Tribunal and we see no reason to change the same. Since the appellant was aged 24 at the time of accident, 17 was taken as the multiplier. We see no ground to enhance the multiplier fixed by the Tribunal even though it was argued that considering the present life span a higher multiplier ought to have been taken. Appellant has produced two medical

certificates. Ext.A7 medical certificate shows that he has 15% disability. Thereafter, he produced Ext.A10 medical certificate from the Medical Board which shows that he has 20% disability. The above medical certificate issued by the District Medical Board reads as follows:

> "We the members of Medical Board today examined Sri.Baburaj, 30 yrs. Whose signature is given above and found that he is an Orthopaedically handicapped person with Post traumatic sequlac of partial ankylosis of left elbow joint with flexion restricted to 90^{o} and extension restricted to less than 45^{o}. There is also restriction of pronation of left forearm. He cannot bear weight on his left upper limb, find it difficult to which his perianal region and cannot being his arm to his mouth and head. He cannot use his right forearm fully. All these disabilities followed on Road Traffic Accident, he was involved in 22.6.93. He had comminuted intercondylar fracture of left humerus and we have perusal the records from Medical Trust Hospital and Medicare Hospital, Ernakulam.
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> He is an Orthopaedically disabled person and his partial permanent disability is assessed to be 20%(Twenty)."

The Tribunal taken only 5% disability. We are of the opinion that at least 15% ought to have been taken by the Tribunal. If 15% is taken as the disability, compensation payable will be Rs.30,600/= (1000 x 12 x 17 x $\frac{15}{100}$).

Tribunal awarded only Rs.10,200/= for disability.

Therefore, appellant will be entitled to Rs.20,400/= more under that head. It is contended that compensation granted for treatment expenses and pain and suffering are very low. But, considering the total compensation awarded, we are not increasing the compensation granted under other heads. The additional compensation of Rs.20,400/= should be deposited by the second respondent insurance company, over and above the decreed amount, with 7% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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